

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN W. DUNIGAN,

Plaintiff,

v.

OTIS D. WRIGHT, JR., et al.,

Defendants.

No. 2:25-cv-1786-SCR

ORDER AND

FINDINGS & RECOMMENDATIONS

By order filed September 19, 2025, the court found plaintiff's complaint defective and granted 30 days to file an amended complaint. ECF No. 8. The court warned plaintiff that failure to comply would result in recommendations to dismiss this action. Id. Plaintiff has not filed an amended complaint. On October 24, 2025, plaintiff filed a notice indicating that he would not be filing an amended complaint. ECF No. 9.

When deciding whether to recommend dismissal for failure to comply with a court order, the court must consider "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives." Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (citation omitted). "The public's interest in expeditious resolution of litigation always favors dismissal." Yourish v. Cal.

1 Amplifier, 191 F.3d 983, 990 (9th Cir. 1999). The court's need to manage its docket also weighs
2 in favor of dismissal, particularly given the heavy caseload in this District. The third factor is
3 neutral given that plaintiff's complaint was screened out and defendant was not served, but
4 "[u]nnecessary delay inherently increases the risk that witnesses' memories will fade and
5 evidence will become stale." Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002). The
6 fourth factor weighs against dismissal, but less so if plaintiff is not precluded from litigating this
7 matter. The court has considered less drastic alternatives and concludes that dismissal without
8 prejudice is appropriate.

9 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign
10 this matter to a district court judge.

11 IT IS FURTHER RECOMMENDED that this action be dismissed without prejudice. See
12 Local Rule 110; Fed. R. Civ. P. 41(b).

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
15 after being served with these findings and recommendations, plaintiff may file written objections
16 with the court and serve a copy on all parties. Such a document should be captioned "Objections
17 to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
18 objections within the specified time may waive the right to appeal the District Court's order.
19 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 DATED: November 4, 2025

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24 SEAN C. RIORDAN
25 UNITED STATES MAGISTRATE JUDGE
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